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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Snee Farm Lakes Homeowner's Association, Inc., Individually and on Behalf of those Similarly Situated,

Plaintiff,

v.

The Commission of Public Works for the Town of Mount Pleasant d/b/a Mount Pleasant Waterworks,

Defendant.

CIVIL ACTION NO. 2018-CP-10-2764

ORDER DENYING PLAINTIFF'S MOTION TO ALTER OR AMEND PURUSANT TO RULE 50(e) SCRCP

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SC Court of Appeals

Plaintiff Snee Farm Lakes Homeowner's Association, Inc., Individually and on Behalf of those Similarly Situated ("Plaintiff") filed a Motion to Alter or Amend Pursuant to Rule 59(e) ("Motion"), SCRCP this Court's Order granting summary judgment and dismissing the lawsuit in favor of Defendant the Commission of Public Works for the Town of Mount Pleasant d/b/a Mount Pleasant Waterworks ("Defendant" or "MPW"). The basis of Plaintiff's Motion is that this Court's Order contains the following mistakes of law: 1) failure to address the law on service and user fees; 2) misstating the relevant legal framework on reasonableness; 3) misapplying the standard of review; and 4) misunderstanding the affirmative defenses. The Court denies the Motion and upholds its initial grant of summary judgment in favor of Defendant for the reasons described below.

1. **This Court addressed the applicable law on service and user fees.**

For purposes of this analysis, the Court will assume that MPW's BFC charge is a service fee or user fee, and S.C. Code Ann. § 6-1-300(6) and 6-1-330(B) apply. Thus, the BFC fee must be paid "in return for a particular government service or program made available to the payer that

benefits the payer in some manner different from the members of the general public not paying the fee." S.C. Code Ann. § 6-1-330(6).

According to the Plaintiff citing *Burns v. Greenville County Council*, the statute "requires that a service or user fee provide some special benefit to the members of the public paying that fee." See Motion p. 3 and *Burns*, 861 S.E.2d 31, 33 (2021). The *Burns* court invalidated road maintenance fees and telecommunication fees because they did not provide the payers with a special benefit. *Burns*, 861 S.E.2d 31 (2021). The *Burns* facts are distinguishable from the facts in this case, and for that reason the *Burns* ruling does not impact this Court's grant of summary judgment. In summation, the BFC charge based on assigned REUs provides Plaintiff with a special benefit not available to the general public, including but not limited to the use of the water and sewer system, which is not available to the general public. Further, the BFC collected is used to maintain and keep the water and sewer system running. There are no allegations that the funds collected should not be collected or that the revenues are being used improperly. The ability to have water flow through a customer's faucets at any time on demand is a real benefit that must be paid for regardless of how much water a customer uses. Deposition of Bryan Mantz 1/13/21, p. 37 -38, ll. 8-11. This Court has addressed the law on service and use fees and finds that the law supports a grant of summary judgment in favor of Defendant.

2. This Court did not misstate the relevant legal framework on reasonableness.

The "test of the reasonableness of rates established by a public service district is the service received." *H.A. Sack Company, Inc. v. Forest Beach Public Service District*, 272 S.C. 235, 238, 250 S.E. 2d 340, 341(1978), citing *Simons v. City Council of Charleston et al.*, 181 S.C. 353, 187 S.E.545 (1936). In this case, Plaintiff reserved a certain level of service capacity or potential demand of service on the system, and MPW provided service to Plaintiff for that reserved capacity

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or reserved demand of service. By calculating a BFC based on Plaintiff's reserved capacity, MPW has fixed a rate "reasonably proportionate to the value of the service rendered or bearing some relationship to the present or future cost of providing service." 94 C.J.S. Waters § 730. Plaintiff has not presented any facts to support a finding that MPW did not or was unable to provide the level of reserved service if and when Plaintiff demanded the same.

Instead, Plaintiff complains that it did not need the entire reserved capacity. Plaintiff, argues BFC based on the reserved capacity is "completely divorced from [Plaintiff's] demands on the system (what it costs to serve Snee Farm Lakes HOA, for example) and thereby subsidizing other ratepayers." See Motion p. 7. Plaintiff argues that the BFC must be periodically "rightsized to reflect actual use records over time." Id. So, although Plaintiff readily agrees MPW is allowed to charge a base rate[1], which by Plaintiff's own expert's definition is a fixed rate unrelated to a customer's volumetric use, Plaintiff seeks to have this Court require BFC to be tied to actual volumetric use. In essence, if Plaintiff believes that the concept of BFC is acceptable and reasonable, then a BFC based on reserved capacity is certainly reasonable.

Plaintiff tellingly argues the Court's conclusion would allow "a municipality to charge whatever rates it may fancy provided the water is clear and free-flowing." The question before the Court is not whether MPW has charged "whatever rates it may fancy" but instead whether the rates charged are reasonable, which they are based on the facts presented and the applicable legal standard. The Court cannot and will not dictate exactly how a municipality sets its rates so long as those rates meet the legal parameters, which they do in this case.

[1] "To be clear, Plaintiff has never argued that MPW is not allowed to charge a base rate." Motion p. 7.

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3. **This Court applied the correct standard of review in considering the merits of Plaintiff's claims.**

Plaintiff argues the Court misapplies the standard of review when it considered the merits of the case, because ***the Court relied on Plaintiff's own expert***. Plaintiff identified Bryan Mantz as an expert in his field, but now asks the Court to ignore Mr. Mantz's clear testimony that contradicts Plaintiff's position. Plaintiff accuses the Court of ignoring other evidence indicating of MPW's ratemaking practices are unreasonable, but Plaintiff fails to identify such evidence that would trump Plaintiff's own expert. The problem Plaintiff has is that Mr. Mantz testified 1) that a water system <u>should</u> charge a BFC based on something other than actual volumetric use –that to do so is the recommended best practice and 2) that a system whereby the BFC is based on a water meter size is reasonable and acceptable. See Mantz Deposition 1/13/21 pp. 90-91, ll. 7-9, 12-25, pp. 116-117, ll. 5-8, 20-4, p. 49, ll. 16-19. Plaintiff offered Mr. Mantz up as an expert and thus is tied to his opinions.

Again, the Court is not entitled to review and criticize a municipalities' rate making unless such rate making falls below a legal standard. In this case, the evidence, including Plaintiff's own expert support a finding that MPW's rates meet a basic legal standard of reasonableness.

4. **This Court correctly addressed the affirmative defenses.**

The Court, reviewing the facts, pleadings, law and importantly, Plaintiff's own expert, in the light most favorable to Plaintiff, finds that Plaintiff's claims are barred for a variety of reasons, including the applicable statute of limitations, Plaintiff's failure to mitigate its damages and Plaintiff's voluntary payment of the funds it claims are damages. Plaintiff claims the Court incorrectly analyzed these defenses.

Statute of Limitations

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Plaintiff argues that each bill issued by MPW caused a new injury. This argument does not change this Court's ruling that the statute of limitations bars Plaintiff's claim. A cause of action accrues at the time a plaintiff has a legal right to sue on it. *Brown vs. Finger,* 240 S.C. 102, 124 S.E.2d 781 (1962). The genesis of Plaintiff's claim is that MPW assigned excessive REUs to each customer prior to establishing service or at a change in use and that these assignments were incorrect. See Amended Summons & Complaint § 9. Plaintiff claims that because of the alleged incorrect REU assignments, MPW charged Plaintiff excessive BFC each month. But the charge was set at the time the REU assignment was made, not as of a calculation made each month. In fact, the BFC, based on the REU assignment, is the exact same every month. So, the statute of limitations began to run when Plaintiff knew or should have known that it had been assigned allegedly excessive REUS. As a result, Plaintiff's claim is barred by the applicable statute of limitations.

Further, it is relevant that Plaintiff employed a ***professional property manager***, who testified she knew that MPW charged a basic facility charge based on the assigned REUs, but she had never attempted to calculate the BFC and compare it to the total water gallon usage listed on the bills. See Defendant's Reply, Exhibit F, Lona Vest Deposition pp. 12, ll. 1-25, pp. This admittance illustrates Plaintiff's lack of regard for the issue. Simply put, it appears Plaintiff never took the time to calculate its bill versus Plaintiff's volumetric usage. Plaintiff had all necessary information and professional staff to start asking questions and determine whether it had "unused REUs" assigned to its account.

Plaintiff also argues that the bills did not provide an explanation as to how Plaintiff could reduce its assigned REUs. However, again, Plaintiff had the information at its fingertips to determine that it was being allegedly overcharged for the BFC – its' assigned number of REUs

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and the volume of water used each month. Most importantly though, Plaintiff never made an inquiry as to how it could reduce its assigned REUs. Plaintiff knew or should have known that it had a claim but failed to initiate the claim within three years from the date of being put on notice.

Voluntary Payment

Plaintiff asserts that the voluntary payment doctrine does not apply because "South Carolina has never found this doctrine applicable in a case involving a local government in a tax, fee, or rate dispute." See Motion p. 14. In fact, in *Self Storage Ass'n vs. City of Aiken*, WL 10862806 (Ct. App. 2012), the Court of Appeals affirmed a trial court ruling that the voluntary payment doctrine bar provided the grounds for summary judgment in favor of the City of Aiken regarding paid taxes. While this is an unpublished opinion that did not discuss the merits of the voluntary payment doctrine decision, the Court of Appeals did not strike down the voluntary payment doctrine application simply because it was asserted by a government entity.

Plaintiff also seems to distinguish payment for water service from some other type of voluntary payment because Plaintiff asserts that failure to pay the water bill could "result in the suspension of …a basic need." See Motion, p. 15. Plaintiff cites a case from Illinois regarding phone service. However, again, there are no South Carolina cases, which distinguish between the services for which the voluntary payment doctrine applies. Even assuming Plaintiff had no option but to purchase water from MPW, Plaintiff has not addressed why it never sought to reduce its REUs except to assert that it didn't want to give them up. Plaintiff was not forced to maintain its level of REUs at its current level, the same level that was assigned to Plaintiff in 1982.

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Plaintiff can lower its REUs, but Plaintiff has chosen not to. This is the definition of voluntary payment, which bars Plaintiff's claims against MPW. The Court properly granted summary judgment on the voluntary payment doctrine.

Failure to Mitigate Damages

Plaintiff claims that if it had reduced its REUs and thus reduced its claimed damages, as Plaintiff agrees it is able to do, it would incur an "expense" by giving up its REUs. Plaintiff's argument is not new. The Order addresses the fact that Plaintiff has made a business decision to keep its REUs and thus continue to pay BFC based on the number of REUs assigned. All parties agree there is a value to maintaining unused REUs. This Court will not allow Plaintiff to go forward seeking "damages" from MPW that Plaintiff chose to incur.

CONCLUSION

For the reasons stated herein, Plaintiff's Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP is denied in its entirety.

IT IS SO ORDERED.

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The Honorable R. Markley Dennis, Jr.

November _____, 2021

Charleston, South Carolina

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Charleston Common Pleas

Case Caption:	Snee Farm Lakes Homeowners Association Inc VS Commission of Public Works for the Town of Mount Pleasant Th , defendant, et al
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R. Markley Dennis Jr., 2060

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